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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

THE PEOPLE,

Plaintiff and Respondent,

v.

DALVIR SINGH,

Defendant and Appellant.

C062343

(Super. Ct. No. CRF040871)

This is an appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436. One afternoon in March 2004, two men got out of a parked car near a park in Yuba City. The person on the passenger side pulled out a hockey stick and began running towards Bhapinder Kang. From the driver's side, defendant, Dalvir Singh, pulled out a black handgun and fired two shots in Kang's direction. Kang got into an associate's Ford Bronco, in which they fled for their lives. Several eyewitnesses identified defendant as the shooter.

Defendant entered a plea of no contest to discharging a firearm in a grossly negligent manner (Pen. Code, § 246.3). The court placed defendant on five years' formal probation. Among the conditions of his probation, defendant could not leave the state without the consent of his probation officer, and he had to keep the probation officer advised of his residence.

Defendant, a truck driver, left the state without obtaining permission from the probation department on the following dates in 2009: between January 2 and January 12, between February 7 and February 9, between February 15 and February 20, and between February 22 and February 25. The probation officer had told defendant that he had to get a travel permit before leaving the state, and had to report any absence from his residence longer than 24 hours.

Following a contested hearing, the court sustained allegations that defendant violated his probation by repeatedly failing to report trips outside of the state and leaving his home for more than 24 hours. At sentencing, the court was informed defendant had been convicted of driving under the influence for an incident in October 2008. The court revoked probation and sentenced defendant to the middle term of two years in prison, ordered defendant to pay any unpaid fines from his initial sentencing, and awarded 158 days' presentence credit (106 actual plus 52 days conduct).

Defendant appeals.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the

case and requests this court to review the record and determine whether there are any arguable issues on appeal. Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Pursuant to this court's Miscellaneous Order No. 2010-002, filed March 16, 2010, we deem defendant to have raised the issue (without additional briefing) of whether amendments to Penal Code section 4019, effective January 25, 2010, apply retroactively to his pending appeal and entitle him to additional presentence credits. (Ct. App., Third App. Dist., Misc. Order No. 2010-002.) We conclude that the amendments do apply to all appeals pending as of January 25, 2010. (See *In re Estrada* (1965) 63 Cal.2d 740, 745 [amendment to statute lessening punishment for crime applies "to acts committed before its passage provided the judgment convicting the defendant of the act is not final"]; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393 [applying the rule of *Estrada* to amendment allowing award of custody credits]; *People v. Doganiere* (1978) 86 Cal.App.3d 237 [applying *Estrada* to amendment involving conduct credits].) Defendant is not among the prisoners excepted from the additional accrual of credit. (Pen. Code, § 4019, subds. (b)(2) & (c)(2); Stats. 2009-2010, 3rd Ex. Sess., ch. 28, § 50.) Consequently, defendant having served 106 days of presentence custody, is entitled to 106 days of conduct credit.

Having undertaken an examination of the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is modified to reflect an award of 106 days of conduct credit for a total of 212 days of presentence credit. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting the changed conduct credit and to forward a certified copy to the Department of Corrections and Rehabilitation.

CANTIL-SAKAUYE, J.

We concur:

SIMS, Acting P. J.

RAYE, J.